UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATATREASURY CORPORATION,	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION NO. 2:06-CV-72-DF
v.	§	
	§	JURY TRIAL DEMANDED
WELLS FARGO & COMPANY, et al.	§	
	§	
Defendants.	§	

DEFENDANT FIRST-CITIZENS BANK & TRUST COMPANY'S
FIRST AMENDED ANSWER, COUNTERCLAIM, AND JURY DEMAND

Defendant First-Citizens Bank & Trust Company ("First-Citizens Bank") files this First Amended Answer, Counterclaim, and Jury Demand to plaintiff DataTreasury Corporation's First Amended Complaint for Patent Infringement ("Complaint").

I. THE PARTIES

1. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

2. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

3. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

4. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

5. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

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6. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

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40. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

41. First-Citizens Bank admits that First Citizens BancShares, Inc. is a Delaware corporation that maintains its principal place of business at 3128 Smoketree Court, Raleigh, North Carolina 27604, and that it can be served with process through its Registered Agent for Service, Lewis R. Holding, 239 Fayetteville Street, Raleigh, North Carolina 27601. First-Citizens Bank denies the remaining allegations of this paragraph of the Complaint.

42. First-Citizens Bank admits that it is a wholly-owned banking subsidiary of Defendant First Citizens BancShares, Inc. and that it can be served with process through its Registered Agent for Service, James B. Hyler, Jr., 239 Fayetteville Street, Raleigh, North Carolina 27601. First-Citizens Bank denies the remaining allegations of this paragraph of the Complaint.

43. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

44. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

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58. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

II. JURISDICTION AND VENUE

59. First-Citizens Bank admits that this action arises under the patent laws of the United States, Title 35 of the United States Code, and that this Court's subject matter jurisdiction over this action is proper under 35 U.S.C. § 271 et seq. and 28 U.S.C. § 1338. First-Citizens Bank denies the remaining allegations of this paragraph of the Complaint.

60. First-Citizens Bank denies the allegations of this paragraph of the Complaint with respect to First-Citizens Bank and First Citizens BancShares, Inc. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint with respect to the other defendants.

61. First-Citizens Bank denies that venue is proper in this Court. First-Citizens Bank denies the remaining allegations of this paragraph of the Complaint with respect to First-Citizens Bank and First Citizens BancShares, Inc. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the remaining allegations of this paragraph of the Complaint with respect to the other defendants.

62. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

63. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

64. First-Citizens Bank admits that it owns a common limited liability company membership interest in The Clearing House Payments Company, LLC. First-Citizens Bank admits that it is a current user of Small Value Payments Company, LLC. First-Citizens Bank

denies that First Citizens BancShares, Inc. is an owner or current user of The Clearing House Payments Company, LLC and/or Small Value Payments Company, LLC. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint with respect to the other defendants. First-Citizens Bank denies the remaining allegations of this paragraph of the Complaint.

65. First-Citizens Bank denies the allegations of this paragraph of the Complaint with respect to First-Citizens Bank and First Citizens BancShares, Inc. First-Citizens Bank admits that this Court determined in a previous Order that Small Value Payments Company was subject to the specific jurisdiction of this Court but was not subject to the general jurisdiction of this Court. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint with respect to the other defendants.

III. PATENT INFRINGEMENT

66. First-Citizens Bank admits that on its face U.S. Patent No. 5,910,988 (the "'988 Patent") identifies that it issued on June 8, 1999, identifies Claudio R. Ballard as the sole named inventor, and includes the title "Remote Image Capture with Centralized Processing and Storage." First-Citizens Bank denies the remaining allegations of this paragraph of the Complaint.

67. First-Citizens Bank admits that on its face U.S. Patent No. 6,032,137 (the "'137 Patent") identifies that it issued on February 29, 2000, identifies Claudio R. Ballard as the sole named inventor, and includes the title "Remote Image Capture with Centralized Processing and

Storage." First-Citizens Bank denies the remaining allegations of this paragraph of the Complaint.[1]

68. First-Citizens Bank admits that on its face U.S. Patent No. 5,265,007 (the "'007 Patent") identifies that it issued on November 23, 1993, identifies John L. Barhhard, Jr., Thomas K. Bowen, Terry L. Geer, and John W. Liebersbach as named joint inventors, and includes the title "Central Check Clearing System." First-Citizens Bank denies the remaining allegations of this paragraph of the Complaint.

69. First-Citizens Bank admits that on its face U.S. Patent No. 5,583,759 (the "'759 Patent") identifies that it issued on December 10, 1996, identifies Terry L. Geer as the sole named inventor, and includes the title "Mechanism for Expediting the Deposit, Transport and Submission of Checks into the Payment System." First-Citizens Bank denies the remaining allegations of this paragraph of the Complaint.

70. First-Citizens Bank admits that on its face U.S. Patent No. 5,717,868 (the "'868 Patent") identifies that it issued on February 10, 1998, identifies David L. James as the sole named inventor, and includes the title "Electronic Payment Interchange Concentrator." First-Citizens Bank denies the remaining allegations of this paragraph of the Complaint.

71. First-Citizens Bank admits that on its face U.S. Patent No. 5,930,778 (the "'778 Patent") identifies that it issued on July 27, 1999, identifies Terry L. Geer as the sole named inventor, and includes the title "System for Expediting the Clearing of Financial Instruments and Coordinating the Same with Invoice Processing at the Point of Receipt." First-Citizens Bank denies the remaining allegations of this paragraph of the Complaint.

72. First-Citizens Bank denies the allegations of this paragraph of the Complaint.

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[1] First-Citizens Bank submits its answer as to allegations regarding the '988 and '137 Patents, for which the Court has entered a stay as to First-Citizens Bank and First Citizens BancShares. (*See* Docket No. 397). By submitting this answer, First-Citizens Bank does not waive its rights under the stay and seeks no relief from the stay.

IV. COUNT ONE - THE '988 DEFENDANTS

73. First-Citizens Bank denies that either it or First Citizens BancShares, Inc. has been or is infringing the '988 Patent by making, using, selling, offering for sale, and/or importing in or into the United States, directly, contributorily, and/or by inducement, without authority, products and services that fall within the scope of the claims of the '988 Patent. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint with respect to the other defendants. First-Citizens Bank denies the remaining allegations of this paragraph of the Complaint.

74. First-Citizens Bank denies that either it or First Citizens BancShares, Inc. has been or is actively inducing and/or contributing to the infringement of the '988 Patent among the defendants and by others. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint with respect to the other defendants.

75. First-Citizens Bank denies that either it or First Citizens BancShares, Inc. has infringed or is infringing the '988 Patent willfully or otherwise. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint with respect to the other defendants.

76. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

V. COUNT TWO - THE '137 DEFENDANTS

77. First-Citizens Bank denies that either it or First Citizens BancShares, Inc. has been or is infringing the '137 Patent by making, using, selling, offering for sale, and/or importing in or into the United States, directly, contributorily, and/or by inducement, without authority,

products and services that fall within the scope of the claims of the '137 Patent. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint with respect to the other defendants. First-Citizens Bank denies the remaining allegations of this paragraph of the Complaint.

78. First-Citizens Bank denies that either it or First Citizens BancShares, Inc. has been or is actively inducing and/or contributing to the infringement of the '137 Patent among the defendants and by others. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint with respect to the other defendants.

79. First-Citizens Bank denies that either it or First Citizens BancShares, Inc. has infringed or is infringing the '137 Patent willfully or otherwise. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint with respect to the other defendants.

80. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

VI. COUNT THREE - THE '007 DEFENDANTS

81. First-Citizens Bank denies that either it or First Citizens BancShares, Inc. has been or is infringing the '007 Patent by making, using, selling, offering for sale, and/or importing in or into the United States, directly, contributorily, and/or by inducement, without authority, products and services that fall within the scope of the claims of the '007 Patent. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint with respect to the other defendants. First-Citizens Bank denies the remaining allegations of this paragraph of the Complaint.

82. First-Citizens Bank denies that either it or First Citizens BancShares, Inc. has been or is actively inducing and/or contributing to the infringement of the '007 Patent among the defendants and by others. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint with respect to the other defendants.

83. First-Citizens Bank denies that either it or First Citizens BancShares, Inc. has infringed or is infringing the '007 Patent willfully or otherwise. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint with respect to the other defendants.

VII. COUNT FOUR - THE '759 DEFENDANTS

84. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

85. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

86. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

VIII. COUNT FIVE - THE '868 DEFENDANTS

87. First-Citizens Bank denies that either it or First Citizens BancShares, Inc. has been or is infringing the '868 Patent by making, using, selling, offering for sale, and/or importing in or into the United States, directly, contributorily, and/or by inducement, without authority, products and services that fall within the scope of the claims of the '868 Patent. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of

this paragraph of the Complaint with respect to the other defendants. First-Citizens Bank denies the remaining allegations of this paragraph of the Complaint.

88. First-Citizens Bank denies that either it or First Citizens BancShares, Inc. has been or is actively inducing and/or contributing to the infringement of the '868 Patent among the defendants and by others. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint with respect to the other defendants.

89. First-Citizens Bank denies that either it or First Citizens BancShares, Inc. has infringed or is infringing the '868 Patent willfully or otherwise. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint with respect to the other defendants.

IX. COUNT SIX - THE '778 DEFENDANTS

90. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

91. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

92. First-Citizens Bank is without sufficient knowledge or information either to admit or deny the allegations of this paragraph of the Complaint.

93. First-Citizens Bank denies that plaintiff is entitled to any of the relief requested in paragraphs A.-H. of the Relief section of the Complaint.

AFFIRMATIVE DEFENSES

First Defense

94. This Court lacks personal jurisdiction over First-Citizens Bank.

Second Defense

95. Venue in the Eastern District of Texas is improper.

Third Defense

96. First-Citizens Bank has not infringed any valid claim of the '007 Patent or the '868 Patent (collectively, the "Asserted Patents").

Fourth Defense

97. The claims of the Asserted Patents are invalid for failure to comply with the requirements of Title 35 of the United States Code.

Fifth Defense

98. The Asserted Patents are unenforceable by reason of inequitable conduct committed at the United States Patent and Trademark Office during prosecution of the applications that eventually matured into the Asserted Patents.

Sixth Defense

99. On information and belief, First-Citizens Bank enjoys actual and/or implied licenses to the Asserted Patents.

Seventh Defense

100. Plaintiff's claims of alleged infringement of the Asserted Patents are barred, in whole or in part, under the doctrine of laches and/or the statute of limitations.

Eighth Defense

101. At least some of the allegedly infringing activities of First-Citizens Bank that DataTreasury complains of in its Complaint were "for the Government and with the authorization or consent of the Government" for the purposes of 28 U.S.C. § 1498(a).

102. At least part of DataTreasury's remedy for First-Citizens Bank's allegedly infringing use complained of in the Complaint "shall be by action against the United States in the United States Court of Federal Claims for the recovery of [its] reasonable and entire compensation for such use" pursuant to 28 U.S.C. § 1498(a).

COUNTERCLAIM

Subject to and without waiving the defenses of lack of personal jurisdiction and improper venue, Defendant First-Citizens Bank counterclaims against plaintiff for declaratory judgment and alleges the following:

1. First-Citizens Bank incorporates by reference all of the allegations of the preceding Answer from paragraphs 1 to 102.

2. This counterclaim arises under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, and the patent laws of the United States set forth in Title 35 of the United States Code and in Title 37 of the Code of Federal Regulations.

3. This Court has jurisdiction over this counterclaim pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201(a). Venue is based on 28 U.S.C. §§ 1391(b), (c) and 1400(b). This Court has personal jurisdiction over plaintiff.

4. Plaintiff filed the Complaint against First-Citizens Bank and other defendants for infringement of the Asserted Patents. Accordingly, an actual justiciable case or controversy exists between plaintiff and defendants.

5. First-Citizens Bank has not infringed any valid claim of the Asserted Patents.

6. The claims of the Asserted Patents are invalid for failure to comply with the requirements of Title 35 of the United States Code.

7. The Asserted Patents are unenforceable by reason of inequitable conduct committed at the United States Patent and Trademark Office during prosecution of the applications that eventually matured into the Asserted Patents.

8. On information and belief, First-Citizens Bank enjoys actual and/or implied licenses to the Asserted Patents.

9. Plaintiff's claims of alleged infringement of the Asserted Patents are barred, in whole or in part, under the doctrine of laches and/or the statute of limitations.

PRAYER FOR RELIEF

WHEREFORE, First-Citizens Bank respectfully prays that this Court:

A. Dismiss the Complaint with prejudice;

B. Adjudge, declare, and decree that the claims of the Asserted Patents are invalid and not infringed by First-Citizens Bank;

C. Permanently enjoin plaintiff, its successors, and assigns, and anyone acting in concert therewith or on its behalf, from attempting to enforce the Asserted Patents against First-Citizens Bank or any parent, affiliate, or subsidiary of First-Citizens Bank, or its respective officers, agents, employees, successors, and assigns;

D. Find this case exceptional and award reasonable attorneys' fees to First-Citizens Bank pursuant to 35 U.S.C. § 285;

E. Award the costs of this case to First-Citizens Bank; and

F. Award to First-Citizens Bank any further relief to which First-Citizens Bank is entitled.

JURY DEMAND

First-Citizens Bank demands a trial by jury of all issues so triable pursuant to Federal Rule of Civil Procedure 38.

Dated: April 9, 2007.

Respectfully submitted,

/s/ Larry D. Carlson

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ATTORNEYS FOR DEFENDANTS FIRST-CITIZENS BANK & TRUST COMPANY AND FIRST CITIZENS BANCSHARES, INC.

CERTIFICATE OF SERVICE

I certify that on April 9, 2007, all counsel who are deemed to have consented to electronic service are being served with a copy of this document by the Court's Electronic Filing System, pursuant to Local Rule CV-5(a)(3)(A).

/s/ Larry D. Carlson
Larry D. Carlson